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NOTES.

FEDERAL POLICE REGULATIONS UNDER THE COMMERCE CLAUSE.—The obvious purpose of delegating to Congress the right to regulate interstate commerce was to lodge in that body the power, by appropriate legislation, to free the channels of that commerce from embarrassing state restrictions,[1] rather than to place limitations upon participation in interstate commerce, which, apparently, was regarded as a fundamental right.[2] Hence it is not surprising that the earliest efforts to limit this power of Congress should have been grounded, not upon inherent rights of federal citizenship, but upon rights claimed under state

[1] 1 Watson, Constitution, 461.

[2] See Employers' Liability Cases (1908) 207 U. S. 463, 502; Second Employers' Liability Cases (1912) 223 U. S. 1.

enactments.[3] And it was early settled that the States may, in the absence of legislation by Congress, pass laws regulating commerce as to subjects that are local in character.[4] But the recognition of the potentiality of this power, granted, perhaps, solely in the interests of trade,[5] to justify legislation in the interests of the health, morals and safety of the general public, has led to the enactment of a series of federal statutes which have been vigorously assailed as violative of fundamental rights. All these laws, which have been enacted under the guise of regulating commerce, may be divided into two classes: those which render the agencies of commerce more safe or efficient;[6] and those directed principally to ameliorating conditions as to the general welfare. The statutes of the former class undoubtedly fall within the narrowest conception of the power to regulate commerce;[7] but legislation of the second class has been denounced as an attempted exercise of a federal police power which, it is alleged, Congress does not possess.[8] And while the fundamental question involved is rather the scope of the Congressional power, the question of the existence of a federal policy power is important, since, if it does exist, important principles as to the police powers of the States may well be held applicable.

That the decisions of the Supreme Court sanction the exercise of such a power seems now scarcely open to question.[9] Its existence was first clearly recognized in the celebrated *Lottery Case*[10] which upheld a statute forbidding the shipment of lottery tickets in interstate commerce, in spite of the fact that the legislation was directed solely to the suppression of a traffic deemed detrimental to the public morals. Upon the same principles have been sustained an act of Congress prohibiting the shipment of articles to be used for immoral purposes,[11] and the Pure Food and Drugs Act, denying the facilities of interstate commerce to adulterated food and drugs, and providing for their inspection and confiscation even after they have become mingled with the common

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[3]Gibbons *v.* Ogden (1824) 9 Wheat. 1; Brown *v.* Maryland (1827) 12 Wheat. 419.

[4]Cooley *v.* Board of Port Wardens (1851) 12 How. 299; County of Mobile *v.* Kimball (1880) 102 U. S. 691, 697.

[5]Watson, Constitution, 454 *et seq.*

[6]Under this head may be classed the safety appliance acts, see United States *v.* Colorado & N. W. R. R. (C. C. A. 1907) 157 Fed. 321, *certiorari* denied (1908) 209 U. S. 544; the employers' liability act, Second Employers' Liability Cases, *supra;* the acts forbidding the interstate shipment of diseased cattle, Reid *v.* Colorado (1902) 187 U. S. 137; the Commodities Clause of the Hepburn Act, United States v. Delaware & Hudson R. R. (1909) 213 U. S. 366.

[7]But this plenary power to regulate the business of agencies of commerce cannot be abused so as to deprive persons of property without due process of law. Adair *v.* United States (1908) 208 U. S. 161.

[8]See 4 Harvard Law Rev. 221.

[9]See 4 Columbia Law Rev. 563.

[10]Champion *v.* Ames (1903) 188 U. S. 321.

[11]United States *v.* Popper (D. C. 1899) 98 Fed. 423. The right of Congress to exclude objectionable matter from the mails on the ground that the use of the mail service is only a privilege is well established. *Ex parte* Jackson (1877) 96 U. S. 727; *In re* Rapier (1892) 143 U. S. 110.

mass of property in the receiving State.[12] And the Court has unanimously upheld the constitutionality of the White Slave Act, making criminal the transportation of women in interstate commerce for immoral purposes.[13] And that the purpose underlying these statutes is not to render the service of transportation more safe or efficient, but is rather the protection of the general public from the effect of outlawed goods or persons after their interstate journey is ended, is made plain by the recent case of *Wilson* v. *United States* (1914) 34 Sup. Ct. Rep. 347, in which it was held that it is immaterial whether the prostitute be carried by private vehicle or common carrier. And, it seems, it is equally immaterial whether the immoral act sought to be prevented falls within the class of commercial prostitution, or that of concubinage and private intercourse.[14]

While the rights of Congress to close the channels of interstate commerce to articles whose natural effect is detrimental to the general welfare after the transportation has ceased thus seems well settled, the validity of such police legislation affecting production is still an open question. Heretofore, the decisions have carefully distinguished production from distribution, declaring the former to be subject to the reserved powers of the States.[15] Moreover, it may be argued that an effort by the federal government to conserve the health and morals of those engaged in production is distinguishable from the case where only the welfare of the consumer is concerned, for in the latter case the States have granted away to Congress their power to forbid the importation of harmful goods,[16] while in the former case the States have reserved to themselves plenary power over production; so that a federal regulation of that subject would more clearly appear to be a nullification of States' rights. The refutation of this argument must be found in the affirmative answer to the question: If Congress can legislate to protect the public health, morals and safety from harm after the interstate journey has ended, may it not protect it from harm inflicted before the journey begins? Again, it may be urged that such an enactment would be violative of the Fifth Amendment.[17] But if it

[12]Hipolite Egg Co. *v.* United States (1911) 220 U. S. 45; McDermott *v.* Wisconsin (1913) 228 U S. 115.

[13]Hoke *v.* United States (1913) 227 U. S. 308; Athanasaw *v.* United States, *Ibid.* 326.

[14]See United States *v.* Flaspoller (D. C. 1913) 205 Fed. 1006; *cf.* United States *v.* Bitty (1908) 208 U. S. 393.

[15]United States *v.* E. C. Knight Co. (1895) 156 U. S. 1; see Kidd *v.* Pearson (1888) 128 U. S. 1; Coe *v.* Erroll (1886) 116 U. S. 517; but see 10 Columbia Law Rev. 704. The effect of these decisions will be greatly impaired if the existing statutes and regulations for the control of the production of serums and toxins, and the preparation of dressed meat intended for interstate shipment be held valid. See 1 Georgetown Law Journ. 129.

[16]And it is upon this ground of aid to the States that the reasoning of the police power cases seems to proceed. See Hoke *v.* United States, *supra,* pp. 321-322; Champion *v.* Ames, *supra,* pp. 357-358.

[17]Though practically every state police regulation is attacked on the ground of want of due process of law, only a small percentage are ever held unconstitutional on this ground, the judgment of the legislature usually being regarded as conclusive as to the necessity for the law. See Freund, Police Power, § 69; 13 Columbia Law Rev. 294.

be conceded that Congress possesses a police power within the field of interstate commerce, the rights of the individual in this field may be sacrificed, provided the necessity therefor exists, and the means be reasonably adapted to the end sought.[18] And though it may be urged that the courts should look behind the apparent purpose of such an act to ascertain its practical effect, a principle of construction of occasional application in the voiding of state statutes,[19] yet the fact remains that the Supreme Court has never applied this test to federal statutes. Upon the whole, it seems that the welfare of the producer is no less important than that of the consumer, and that the Congressional power over interstate commerce may likewise be invoked for his protection. Hence, since there is no distinction between the two situations from legal standpoint, it seems that if a statute similar to the proposed Child Labor Law[20] be held unconstitutional, the decision must turn upon questions of fact as to the necessity for the legislation and the reasonableness of the means adopted to protect the public health.

LIABILITY OF PLEDGEE OF STOCK AS SHAREHOLDER.—The pledgee of a chattel does not take the legal title, but has special property in the thing pledged, the general property remaining in the pledgor.[1] The pledgee of a chose in action, however, generally acquires the legal title because without it he cannot be said to possess the right pledged.[2] It was once thought that stock and other incorporeal property could not be the subject of a pledge because when the legal title passes to the pledgee the transaction has the aspect of a mortgage rather than a pledge;[3] but the courts, in an effort to carry out the intentions of the parties, soon declared that although the legal title in the chose in action became vested in the pledgee, the "general property" remained in the pledgor.[4] When the interests of the corporation in which the stock was held and its creditors became involved, however, the courts refused to extend the doctrine.[5] Once the transfer had been recorded

[18]See Freund, Police Power, §§ 63, 150; 21 Harvard Law Rev. 609; 10 Columbia Law Rev. 752.

[19]Minnesota *v.* Barber (1890) 136 U. S. 313; *cf.* Yick Wo *v.* Hopkins (1886) 118 U. S. 356.

[20]A bill providing for the exclusion of products of child labor from interstate commerce was introduced in the House of Representatives on January 26, 1914. A similar bill formerly introduced by Senator Beveridge failed of passage. See Watson, Constitution, 532, n. 37.

[1]Thompson *v.* Dolliver (1882) 132 Mass. 103.

[2]See Wilson *v.* Little (1849) 2 N. Y. 443.

[3]See Rice *v.* Gilbert (1898) 173 Ill. 348, 351; Jones, Pledges (3rd ed.) § 151.

[4]Union Trust Co. *v.* Rigdon (1879) 93 Ill. 458; see Dungan *v.* Mutual etc. Co. (1873) 38 Md. 242.

[5]It would seem that the person having the "general property", the "primary and residuary title", might have been regarded as the stockholder, at least as far as liabilities are concerned; but when the corporation and its creditors were pressing their rights, the courts uniformly regarded the pledgor as having only an equitable interest, probably less than equitable ownership. See Matter of Empire City Bank (1858) 18 N. Y. 199, 226. And in most cases a pledgee, who was stockholder of record, was subject to every liability because he had the legal title.